

**STEPTOE & JOHNSON LLP**

**ATTORNEYS AT LAW**

Pantelis Michalopoulos  
202.429.6494  
pmichalo@steptoe.com

**DOCKET FILE COPY ORIGINAL**

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

Telephone 202.429.3000  
Facsimile 202.429.3902  
www.steptoel.com

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**DEC 12 2000**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

December 12, 2000

Via HAND DELIVERY

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals – TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Startec Global Communications Corporation's and Startec Global Operating Company's Petition for Expedited Waiver of the Commission's Rules, CC Docket No. 94-129**

Dear Ms. Salas:

On behalf of Startec Global Communications Corporation and Startec Global Operating Company (collectively "Startec"), enclosed please find for filing an original and four copies of Startec's Petition for Expedited Waiver of the Commission's Rules in the above-referenced matter.

Also enclosed is an additional copy of Startec's Petition, which we ask you to date-stamp and return with our messenger.

If you have any questions, please do not hesitate to contact me.

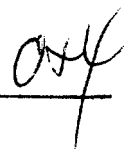
Sincerely,



Pantelis Michalopoulos  
*Counsel for Startec  
Global Communications  
Corporation and Startec Global  
Operating Company*

Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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DEC 12 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Subscriber Carrier  
Selection Changes Provisions of the  
Telecommunications Act of 1996

Policies and Rules Concerning  
Unauthorized Changes of Consumers Long  
Distance Carriers

Startec Global Communications Corporation  
Request for Waiver

CC Docket No. 94-129

**PETITION FOR EXPEDITED WAIVER OF COMMISSION'S RULES**

Startec Global Communications Corporation and its wholly-owned subsidiaries ("Startec") hereby petition for a waiver of the Commission's subscriber verification rules to allow Startec to transfer the customer base of Capsule Communications, Inc. ("Capsule"), consisting of business and residential customers, to Startec without first obtaining each subscriber's authorization and verification.<sup>1</sup> That transfer will occur in the context of a merger whereby Startec will acquire control over Capsule subject to, among other things, Commission approval. Capsule and Startec are requesting this approval by separate application, also filed today. As set forth below, good cause exists for this waiver because the general purpose behind the rule will be fulfilled by the measures proposed by Startec. Indeed, the waiver will serve the public interest

<sup>1</sup> See 47 C.F.R. §§ 64.1100 – 64.1150.

and will *further* rather than threaten the goals underlying the slamming rules because it will ensure that there is no disruption in service for Capsule's customers.

Startec requests expedited treatment of this waiver request because continued high-quality service to Capsule's customers requires expeditious consummation of the merger and transfer of the customers to Startec's subscriber base. In particular, it is a matter of public record that Capsule is experiencing financial difficulties that raise "substantial doubt" about the company's continued viability.<sup>2</sup> Notably, Capsule's difficulties have adversely affected its ability to comply with certain significant contractual obligations.<sup>3</sup> Therefore, unless this transaction can be consummated very expeditiously, Capsule's ability to provide continued service to the customers in question is doubtful.

Startec is a facilities-based telecommunications carrier. Capsule is a reseller providing, among other telecommunications services, switched resale of long distance services and competitive local services to more than 33,000 customers. Pursuant to a Merger Agreement among Startec Global Communications Corporation, its wholly-owned subsidiary Stars Acquisition Corporation, and Capsule and certain of its shareholders dated November 2, 2000,

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<sup>2</sup> See, e.g., 10-K Annual Report of US Wats, Inc. [Capsule's predecessor company], filed with the Securities and Exchange Commission, Mar. 30, 2000 at F-1 (reporting that the company's independent auditors stated that "the Company's net loss, negative working capital and negative cash flows from operations raise substantial doubt about its ability to continue as a going concern.")

<sup>3</sup> *Id.* at F-11 (disclosing that the company was "not in compliance with several of its covenants" in its Loan and Security Agreement with Century Business Credit Corporation).

Stars Acquisition Corporation will merge with and into Capsule, with Capsule surviving the merger. As a result, Capsule will become a wholly-owned subsidiary of Startec, subject to several conditions including Commission approval. For the transaction to succeed, the parties contemplate transferring Capsule's customer base to Startec shortly after consummation of the merger. This transfer will enable Startec to continue to provide Capsule's customers with the same telecommunications services previously provided by Capsule, including long distance and competitive local exchange services.<sup>4</sup>

While this transaction may technically constitute a change of preferred carrier for Capsule's customers, Startec is concerned that strict compliance with the Commission's subscriber verification rules in this instance will result in unnecessary confusion and disruption of service to the current customers of Capsule and will ultimately negate the contemplated benefits of the proposed transaction. Specifically, Capsule's customer base consists of more than 33,000 corporations and individual consumers. Startec (and Capsule) believe that attempts to obtain written and electronic authorizations from these companies and individuals may go unanswered and many of Capsule's current customers will lose critical telecommunications services currently being provided by Capsule. Moreover, since Capsule is currently providing telecommunications services to numerous small and medium-sized companies, any disruption of service might seriously jeopardize the financial viability of these companies. These special

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<sup>4</sup> As mentioned, the parties have requested approval for the transfer of control over Capsule. In addition, Startec already possesses all the requisite authority under the Communications Act, 47 U.S.C. § 214, to provide the services in question.

circumstances warrant a deviation from the Commission's Rules in order to satisfy the public interest.<sup>5</sup> Indeed, the requested waiver is consistent with Commission precedent and the Commission's standard treatment of exactly such transactions. On many prior occasions, the Commission has granted similar requests involving similar circumstances.<sup>6</sup>

To minimize any confusion, Capsule will be sending a notice to each of its customers (customers under individual contract will be notified separately) to notify them of the agreement between Capsule and Startec, and to indicate that their underlying carrier for all telecommunications services, including long-distance, will be changing upon receiving regulatory approval. A copy of this notice is set forth in Exhibit A. In addition, this notice will: (1) notify Capsule's customers that Startec does not have any immediate plans to change the current rates, terms or conditions of the telecommunications services previously provided by Capsule; (2) indicate that there will be no charge associated with the merger; (3) clearly state that each customer is free to choose another telecommunications provider at any time; and (4)

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<sup>5</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest"); *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>6</sup> See *Broadwing Telecommunications, Inc. Petition for Waiver*, 15 FCC Rcd. 10141 (2000). See also *Stratos Telecom, Inc. and Stratos Offshore Services Company Petition for Waiver*, 15 FCC Rcd. 10051 (2000); *International Exchange Communications, Inc. Request for Waiver*, DA 99-1819 (rel. Sept. 10, 1994) (granting IECComm a waiver of the Commission's subscriber verification rules for purposes of its purchase of ITC's assets); *MCI Worldcom, Inc. Request for Waiver*, 14 FCC Rcd. 12264 (1999) (granting a waiver of the authorization and verification requirements of the Commission's rules to the extent necessary to allow it to transfer customers of LDI to a subsidiary of MCI).

provide a toll-free number for any questions. Upon obtaining all necessary regulatory approvals, Startec expects to send another notice notifying each of its customers that the merger has been consummated (*see* Exhibit B). Given the level of detail provided in these notices describing the transaction, both Startec and Capsule are confident that there will not be any confusion as to the change in the underlying telecommunications carrier or the customer's right to choose another carrier. This situation of a technical PIC change is far afield from cases in which a long-distance carrier deceptively changes a customer's current long-distance provider – the specific type of situation the Commission's Rules were meant to prevent. In addition, Startec agrees to investigate and resolve any outstanding customer complaints that may have been filed against Capsule.

In light of the potential for disruption in service (especially on account of Capsule's acute financial difficulties) and in an effort to minimize the delay in consummating this transaction, Startec requests expedited action on this waiver request. Waiver of the Commission's subscriber verification rules as set forth above would ensure a seamless transition to the provision of services by Startec, while the notices sent to Capsule's customers will ensure that all affected customers understand the choices that are available to them.

For the foregoing reasons, Startec respectfully requests that the Commission grant this request for an expedited waiver of the Commission's subscriber verification rules set forth in 47 C.F.R. §§ 64.1100 – 64.1150.

Respectfully submitted,

**Startec Global Communications Corporation**

By: 

Pantelis Michalopoulos

Rhonda M. Bolton

**Steptoe & Johnson LLP**

1330 Connecticut Avenue, NW

Washington, DC 20036

202-429-3000

*Its Attorneys*

Yolanda Stefanou Faerber

General Counsel

Tekedra V. McGee

Corporate Counsel

**Startec Global Communications Corporation**

10411 Motor City Drive

Bethesda, MD 20817

301-365-8959

Dated: December 12, 2000



## **EXHIBIT A**

Dear Customer:

As you may already be aware, Capsule Communications, Inc. ("Capsule") has recently signed an agreement with Startec Global Communications Corporation ("Startec") that will result in the acquisition of Capsule by Startec. Startec is very committed to ensuring that Capsule's customers continue to receive excellent service while benefiting from the additional capabilities provided by Startec, which include a complete range of long distance telephone services.

The transaction will be finalized after, among other things, certain government regulatory approvals have been obtained. At that time, the telecommunications services previously provided by Capsule will be provided by Startec, and Startec will continue to provide these services without interruption. Startec has no current plans to change the rates, terms or conditions of the services provided to you. In addition, no charges or fees will be imposed as a result of the merger. However, you are entirely free to choose another carrier to supply the services currently provided by Capsule. No action is required if you wish to continue with Startec as your telecommunications provider.

Once the transaction has been consummated, an additional notice will be sent to you to indicate the date on which Startec will become your carrier for the above-mentioned telephone services. If you have any questions, please call (800) \_\_\_\_ - \_\_\_\_.

We look forward to your continued business.

Sincerely,

Capsule Communications, Inc.



## **EXHIBIT B**

Dear Customer:

As indicated in a prior letter to you, Capsule Communications, Inc. agreed to merge with Startec Global Communications Corporation ("Startec") subject to, among other things, the receipt of certain regulatory approvals. As of **[insert date]**, this transaction has received these approvals and closed. Startec is now your telecommunications service provider.

Startec has no current plans to change the rates, terms or conditions of the services that Capsule provided to your company. In addition, no charges or fees will be imposed as a result of the merger. However, you are entirely free to choose another carrier to supply the services currently provided by Startec.

If you have any questions, please call (800) \_\_\_\_ - \_\_\_\_.

We look forward to your continued business.

Sincerely,

Startec Global Communications Corporation